IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 21362 of 2007(R)

OS.563/1998 of MUNSIFF COURT, THIRUVALLA
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PETITIONER:

BABY GEORGE,
PATTARUMADATHIL, PUNNAKKUNNAM MURI,
KUTTAPPUZHA VILLAGE, THIRUVALLA TALUK FROM
MUNDAPPALLILAYA PUTHENPURAYIL, CHALAKUZHY MURI,
KAVUMBHAGOM VILLAGE, THIRUVALLA, TALUK.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:
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1. V.A. JOHNYKUTTY,
VADAKKETHIL, MUTHOOR MURI, THIRUVALLA VILLAGE.

2. T.M. CHERIAN,
THOPPIL VEETTIL, PALIYAKKARA MURI,
THIRUVALLA VILLAGE.

BY ADV. SRI.SAJITH KUMAR V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts.:

Ext.P1 true copy of the amendment application dtd. 19.11.02 filed by the petitioner.

Ext.P2 true copy of the order in IA 3489/02 in OS 563/98 of the Munsiff Court, Thiruvalla dated 10.1.2003.

M.N.Krishnan, J.

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W.P(C).No.21362 of 2007

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Dated this the 18th day of October, 2007.

JUDGMENT

This Writ Petition is filed to set aside Ext.P2 order passed in I.A.No.3489 of 2002 in O.S.No.563 of 1998. The suit originally filed is one for a permanent injunction and mandatory injunction. By the proposed amendment, the plaintiff wants to incorporate the prayer for fixation of boundary between the properties. The prayer for mandatory injunction can be worked out in certain cases only if really there is a fixation of boundary.

2. It is true that the suit is of the year 1998. But it is a settled principle of law that multiplicity of proceedings has to be averted and that if really the fixation of boundary is necessary to resolve the disputes between the parties, the court has to allow the amendment. Whether the plaintiff is entitled to the relief and he can get the boundary fixed as he wishes are all matters, which requires consideration and evidence. Therefore, I feel that an

opportunity has to be given to amend the plaint which is really necessary to resolve the controversy between the parties.

3. Therefore, I set aside the order of the court below and allow the amendment application and direct the defendant to file additional written statement and then the court shall dispose of the matter in accordance with law, as expeditiously as possible considering the fact that it is a 1998 suit.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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